

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

STATE OF OHIO, ex rel. MICHAEL DEWINE,  
OHIO ATTORNEY GENERAL,  
30 East Broad St., 25th Floor  
Columbus, Ohio 43215

and

Cleveland-Cuyahoga County Port Authority,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF  
ENGINEERS; THE HONORABLE ERIC  
FANNING, SECRETARY OF THE UNITED  
STATES ARMY; THE HONORABLE JO-  
ELLEN DARCY, ASSISTANT SECRETARY  
OF THE ARMY FOR CIVIL WORKS;  
LIEUTENANT GENERAL TODD  
T.SEMONITE, CHIEF OF ENGINEERS AND  
COMMANDING GENERAL, UNITED  
STATES ARMY CORPS OF ENGINEERS;  
BRIGADIER GENERAL MARK TOY,  
UNITED STATES ARMY CORPS OF  
ENGINEERS, GREAT LAKES AND OHIO  
RIVER DIVISION; AND LIEUTENANT  
COLONEL ADAM CZEKANSKI, DISTRICT  
COMMANDER, UNITED STATES ARMY  
CORPS OF ENGINEERS, BUFFALO  
DISTRICT,

Defendants.

CASE NO. 1:16-cv-2328

JUDGE DONALD C. NUGENT

**Stipulation and Order**

FILED  
2016 OCT -5 PM 3:51  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND, OHIO

WHEREAS Plaintiffs allege in the Complaint that Defendants have violated applicable law or regulations in determining that open-lake placement of dredged material in 2016 from the upper sixth mile of the Cuyahoga River Channel (“the Channel”) is suitable in 2016;

WHEREAS, on September 22, 2016, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction, ECF No. 6-1; and

WHEREAS, Plaintiffs and Defendants wish to avoid further litigation regarding the Motion for Temporary Restraining Order and expeditiously dredge Cleveland Harbor, including the Channel.

NOW, THEREFORE, through their undersigned counsel, Plaintiffs and Defendants hereby stipulate and agree to an Order as follows:

1. Promptly after the Court’s approval of this Stipulation and Order, in a joint notice to the Court, Plaintiffs and Defendants shall withdraw Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction and Defendants’ opposition to that motion.
2. Within 7 days of the Court’s approval of this Stipulation and Order, the Corps agrees to award a contract for 2016 dredging Cleveland Harbor, including the Channel. The Corps agrees to take reasonable steps to award the contract for 2016 dredging earlier than 7 days after the Court’s approval of this Stipulation and Order. After the award of the contract, the Corps shall request that its contractor take all steps consistent with the contract to commence dredging as expeditiously as possible.
3. The Corps shall initially advance the funds for 2016 dredging of the Channel, including the amounts required for placement of all dredged material in a confined disposal facility.
4. If the Corps ultimately prevails on the merits of the suit or if Plaintiffs withdraw this suit such that no merits determination is obtained, Plaintiff State of Ohio shall reimburse the Corps the costs documented as the additional costs required for confined disposal facility placement of dredged materials from the Channel in 2016 that is greater than the amount required for open Lake placement of these dredged materials.
5. For purposes of this Stipulation and Order, the Plaintiffs and Defendants will apply the “wrongfully enjoined” standard consistent with the standard of FRCP 65(c) to determine whether

"the Corps prevails on the merits of the suit" following a final non-appealable order; however, there shall be no requirement for the State to post any security as required by that rule.

6. In the event that the Plaintiffs and Defendants disagree as to whether the Corps has ultimately prevailed on the merits of the suit, either party may petition the Court for such a determination and the Court shall retain jurisdiction as necessary to resolve this dispute.

7. This Stipulation and Order is entered solely to resolve the temporary restraining order and preliminary injunction without litigation. This Stipulation does not represent an admission by any Party to any fact, claim, or defense concerning any issue in this or any other litigation.

8. This Stipulation has no precedential value and shall not be used as evidence by either Defendants or Plaintiffs in this litigation or any other litigation except as necessary to enforce the terms of this Stipulation and Order.

9. This Stipulation represents the entirety of the Parties' commitments. The terms of this Stipulation shall become effective upon approval by the Court.

**IT IS HEREBY AGREED.**

Dated:

JOHN C. CRUDEN

Assistant Attorney General  
Environment & Natural Resources Division

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Dated: October 4, 2016

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*Counsel for Plaintiff,*  
*Cleveland-Cuyahoga County Port Authority*

**IT IS SO ORDERED.**

/s/ Donald C. Nugent  
**DONALD C. NUGENT**  
United States District Judge

**DATE** October 5, 2016